Remarks/Arguments

Claims 1-2, 4-6, 8-13, 16-28, 30-37 and 42 are pending and have been examined. Claims 1, 6, 8, 25, 28, 34 and 37 are independent.

No claims are added, cancelled or amended in this Response. This Response addresses each point of objection and rejection raised by the Examiner. Favorable reconsideration is respectfully requested.

Applicants thank the Examiner for accepting and entering the amendments to the Figure 1 of the drawings and paragraph 46 of the specification as presented in the Applicants' response on September 21, 2009.

Applicants thank the Examiner for withdrawing the previous claim objections and rejections under 35 U.S.C. §112, second paragraph.

Applicants note with appreciation the indication of allowance of claims 8-10, 12, 13, 16-24 and 30-33. Applicants request, however, that the allowance of these claims be held in abeyance until the Examiner has had the opportunity to reconsider the arguments presented below with respect to the remaining claims.

Claim Rejections – 35 U.S.C. § 103

1.   Claims 1, 5, 11, 25, 27, 34 and 42 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Peleg (U.S. Publication No. 2003/0107999) in view of Evans (U.S. Patent No. 6,928,056).

Applicants still disagree with the Examiner's rejection. In the Amendment filed on September 21, 2009, Applicants specifically argued that the Examiner's proposed combination of Peleg and Evans fails to teach or suggest the claimed feature of a "framer configured to receive each of said parallel data streams, and to generate a stream of packets." The outstanding Office Action fails to address the Applicants' arguments pertaining to this claimed feature. The Examiner states on page 4 of the outstanding that Peleg teaches the claimed framer and

specifically points to a chopper 8 shown in Fig. 2 of Peleg and described in paragraph [0038], as allegedly corresponding to this feature. However, the cited chopper as described in Peleg, receives a broadband data stream from a data source and chops the broadband data stream into data cells (allegedly analogous to the claimed packets, which Applicants do not concede) having predetermined size. This broadband data stream, however, cannot reasonably correspond to the each of said parallel data streams as claimed. Claim 1 recites that the framer is configured to generate a stream of packets for a parallel data stream received from an inverse multiplexer. Alternatively, in Peleg, it is only after the chopper separates the broadband data stream into packets, that the packets are inversely multiplexed. Thus, the chopper in Peleg cannot reasonably correspond to the claimed framer. Peleg does not teach or suggest a framer that is configured to receive each of said parallel data streams *from an inverse multiplexer*, to generate a stream of packets. The alleged stream of packets generated in Peleg is not one of the parallel data streams of the inversely multiplexed DS3 data stream as claimed. As such, Peleg fails to teach each feature relied on by the Examiner. The Examiner does combine the disclosure of Peleg with Evans for allegedly teaching that each packet has a packet index number and a packet stream number. The Examiner's combination with Evans however, fails to overcome at least the above deficiencies of Peleg. Thus, there is no reasonable combination of Peleg and Evans that is capable of teaching or suggesting each feature of claim 1.

Accordingly, in view of the above, Applicants submit that claim 1 is patentable over any reasonable combination of Peleg and Evans. Independent claims 25 and 34 recite similar subject matter as that of claim 1 and thus are distinguished from the cited art at least for the reasons presented above. Dependent claims 5, 11, 27, and 42 are patentable on their merit, yet are distinguished from the cited art at least by virtue of their dependency from claims 1, 25 and 34, respectively. As such, Applicants respectfully request reconsideration and withdrawal of the rejections to claims 1, 5, 11, 25, 27, 34 and 42 under 35 U.S.C. 103(a).

Dependent claim 2 is rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Peleg in view of Evans and further in view of Knapp (U.S. Publication No. 2008/0095191). Dependent claims 4, 26 and 35 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Peleg in view of Evans and further in view of Barlev et al. (U.S. Publication No. 2005/0220180). Dependent claim 5 is rejected under 35 U.S.C. 103(a) as allegedly being

unpatentable over Peleg in view of Evans and Knapp and further in view of Barlev. Dependent claim 36 is rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Peleg in view of Evans and further in view of Wolf (U.S. Publication No. 2002/0080825).

With respect to the above dependent claims, Applicants submit that each is patentable on its own merit, yet is distinguished from the cited art at least by virtue of its dependency from independent claims 1, 25 and 34, respectively. As such, Applicants respectfully request reconsideration and withdrawal of the above rejections to each of the dependent claims in view of the remarks presented above with respect to independent claims 1, 25, and 34.

2. Claims 6, 28 and 37 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Peleg (U.S. Publication No. 2003/0107999) in view of Evans (U.S. Patent No. 6,928,056) and further in view of the Applicant's alleged own admission of prior art.

In view of the above, Applicants still disagree with the Examiner's rejections. With respect to claim 6, Examiner relies on the combination of Peleg and Evans to allegedly teach the features of the claimed high speed data interface, framer and plurality of modems. However, as further discussed above, there still is no reasonable combination of Peleg and Evans that teaches at least the claimed framer configured to receive one of the parallel data streams, and to generate a stream of packets.

Further, the Examiner's reliance on the Applicants' alleged prior art to provide a basis of obviousness of the claimed processor that is configured to pass through a first received loopback code to another device, and to enter a loopback mode if an nth subsequent loopback code is received without an intervening loop down code, is incorrect. First, Applicants do not concede that the features described in the present application that are relied on by the Examiner are even prior art. Secondly, in the Amendment filed on September 21, 2009, Applicants clearly pointed out that the alleged Applicants' admitted prior art relied on by the Examiner fails to provide a proper *prima facie* basis of obviousness of the claimed feature. Specifically, Applicants submit that existing test equipment at the time of the present invention were not configured to perform the capability of the claimed feature, as alleged by the Examiner. An exemplary embodiment of the present application introduces the need for the allegedly obvious claim feature that was not

previously needed in the art. In support of this argument, Applicants point to paragraph [0020] of the present specification that discloses that, if an end unit 100 simply responded to either of the loopback codes, the NIU 110 and/or the remote terminal equipment 112 would not be able to respond to that loopback. Contrary to the Examiner's assertions, the Applicants clearly established that such alleged prior art test equipment was not capable of performing the claimed functions and thus could not have been configured as such. Any statements to the contrary must be considered as impermissible hindsight. As such, claim 6 is patentable over the cited art. See Applicants' response filed September 21, 2009 for additional arguments.

The Examiner does not find the above arguments to be persuasive and on page 3 of the outstanding Office Action, provides additional remarks that:

> [T]est sets provide the capability of transmitting a selectable number of loopback activation codes in order to target a particular repeater in-between two end-stations (or either of the end-stations) since each repeater is programmed to activate a loopback only for a specific code. This feature is useful because by isolating repeater sections, faulty lines or repeaters can be accurately detected. If all repeaters activated a loopback at the same time, this would render the test set useless for practical purposes.

Applicants not only disagree with the Examiner's statements as supporting a basis of obviousness, but find the Examiner's reliance on such arguments to be incorrect. The Examiner's statements are not based on any Applicants' alleged prior art, thus it appears the Examiner is taking "official notice" in providing the above statements. However, Applicants do not believe the Examiner's statements are capable of instant and unquestionable demonstration as being well known, and thus are not only inappropriate, especially in asserting a final rejection, but are also impermissible. MPEP 2144.03 states that:

> While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy

dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).... It would <u>not</u> be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

In view of the above section in the MPEP, Applicants submit that the Examiner's assertions under apparent "official notice" would require at least specific knowledge of the prior art and thus are not capable of instant and unquestionable demonstration as well known. In such an instance, according to the section of MPEP cited above, the Examiner's statements must be supported by a reference work recognized as standard in the pertinent art. As such, Applicants respectfully request the Examiner to unquestionably demonstrate that the Examiner's statements were well known at the time of the present application.

Further to the above, even if the Examiner is able to satisfactorily support the statements by a showing that such a feature was well known in the art prior to the present application, Applicants do not believe that such a showing would even be sufficient for providing a proper *prima facie* case of obviousness. The Examiner's statements are directed to test sets that are programmed to activate a loopback only for a specific code. The present claims, however, are not directed to identifying a specific code as stated by the Examiner. Alternatively, claim 6 of the present application recites that a system enters a loopback mode if an nth subsequent loopback code is received without an intervening loop down code. It is unclear how the Examiner's statements are even applicable to the claim features. Thus, not only are they impermissible for supporting a final rejection, but they fail to further provide a reasonable argument for obviousness of the claimed features, especially in view of the arguments presented above and in the response filed on September 21, 2009. As such, Applicants respectfully submit that claim 6 is patentable over the cited art.

Independent claims 28 and 37 recite similar features as those discussed above with respect to claim 6, and thus are believed to be patentable over the cited art for at least the reasons

presented above. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejections to claims 6, 28 and 37 under 35 U.S.C. 103(a). If the Examiner maintains the rejections, the Examiner is respectfully requested to properly state the grounds for rejection in another non-final office action to afford the Applicants an opportunity to respond.
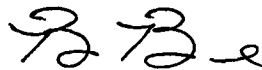
Conclusion

In view of the arguments set forth above, Applicants submit that the present application is in condition for allowance and would appreciate early notification of the same.

Deposit Account Authorization

Authorization is hereby made to charge any fees due or outstanding, or credit any overpayment, to Deposit Account No. **18-2220** (Order No. 45047)

Respectfully Submitted,

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